

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53171; File No. SR-CBOE-2005-117)

January 24, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Dividend and Merger Spread Fee Cap Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 23, 2005, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which items have been prepared by CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule relating to its dividend and merger spread transaction fee cap program.

The text of the proposed rule change is available on CBOE’s Web site at <http://www.cboe.com>, at the Office of the Secretary at CBOE, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with “dividend spread” transactions at \$2,000 for all dividend spread transactions executed on the same trading day in the same options class.⁵ A similar fee cap is currently in place for market-maker, firm, and broker-dealer transaction fees associated with “merger spread” transactions.⁶ These fee caps are in effect as a pilot program (“Strategy Fee Cap”) that is due to expire on March 1, 2006.⁷

The Exchange proposes to amend its Strategy Fee Cap program in the following respects: (i) to reduce the \$2,000 per day per class fee cap to \$1,000 per day per class; (ii) to add “short stock interest” spreads; (iii) to add a monthly fee cap of \$50,000 per initiating firm; (iv) to provide that the

⁵ A “dividend spread” is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

⁶ A “merger spread” transaction is defined as a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

⁷ See Securities Exchange Act Release Nos. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005); 51828 (June 13, 2005), 70 FR 35475 (June 20, 2005); and 52374 (September 1,

Exchange may pass on the full amount of any royalty or license fees to trade participants on dividend, merger and short stock interest spreads; (v) to rebate floor brokerage fees associated with dividend, merger and short stock interest spread transactions; and (vi) to reduce the time period in which dividend, merger and short stock interest spread rebate request forms must be submitted to the Exchange. The proposed modifications to the Strategy Fee Cap program are intended to make the Exchange's program more competitive with the strategy fee cap programs adopted by other exchanges.⁸

First, the Exchange proposes to reduce the \$2,000 per day per class fee cap to \$1,000 per day per class. Thus, market-maker, firm, and broker-dealer transaction fees will be capped at \$1,000 for all dividend and merger spread transactions executed on the same trading day in the same options class. The Exchange is reducing its per day, per class fee cap to match the fee cap of another exchange.⁹

Second, the Exchange proposes to include short stock interest spreads in the Strategy Fee Cap program. Market-maker, firm, and broker-dealer transaction fees will be capped at \$1,000 for all short stock interest spread transactions executed on the same trading day in the same options class. A short stock interest spread is defined as a spread that uses two deep in-the-money put options followed by the exercise of the resulting long position of the same class in order to establish a short stock interest arbitrage position.¹⁰ The fee cap on short stock interest spreads will be subject to the same pilot program applicable to dividend and merger spreads expiring on March 1, 2006.

2005), 70 FR 53402 (September 8, 2005).

⁸ See, e.g., Securities Exchange Act Release Nos. 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005); and 52297 (August 18, 2005), 70 FR 49687 (August 24, 2005).

⁹ See PCX Options Fee Schedule.

¹⁰ See Securities Exchange Act Release No. 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005).

Third, the Exchange proposes to further cap transaction fees associated with dividend, merger and short stock interest spreads at \$50,000 per month, initiating firm. The proposed \$50,000 per month fee cap is also intended to match the fee cap of another exchange.¹¹

Fourth, the Exchange proposes to pass on the full amount of any royalty or license fees to trade participants on dividend, merger and short stock interest spreads. Certain classes of options listed on the Exchange have as their underlying issue licensed products that carry a royalty fee, or license fee, on every contract traded. These fees are assessed by the issuing agency, and are not Exchange transaction fees. License fees that are charged to the Exchange are passed on to the actual participants executing the trade. Even though some of the fees are passed on, the Strategy Fee Cap would prevent the Exchange from recovering these fees in their entirety if they were to be included as transaction fees. If license fees were to be included as transaction fees, the Exchange would face the possibility of having to pay out substantial fees while the Strategy Fee Cap would limit the amount the Exchange would be able to pass on to trade participants. Because of the negative financial implications to the Exchange, the Exchange will not include license or royalty fees associated with dividend, merger and short stock interest spreads in the calculation of the \$1,000 per day per class fee cap and the \$50,000 per month fee cap. Other exchanges have proposed similar changes to their strategy fee caps.¹²

Fifth, the Exchange proposes to rebate floor brokerage fees associated with dividend, merger, and short stock interest spread transactions. The Exchange believes rebating floor brokerage fees for these spread transactions is necessary in order for the Exchange to be

¹¹ Id.

¹² See, e.g., Securities Exchange Act Release Nos. 52935 (December 9, 2005), 70 FR 75525 (December 20, 2005); and 53115 (January 13, 2006), 71 FR 3600 (January 23, 2006).

competitive in attracting these strategies, in that other exchanges do not assess variable floor brokerage fees or significantly discount floor brokerage fees.

Lastly, under the current Strategy Fee Cap program, a rebate request form, along with supporting documentation (e.g., clearing firm transaction data), must be submitted to the Exchange within 30 days of the transactions in order to qualify transactions for the cap. The Exchange proposes to reduce the time period in which dividend, merger, and short stock interest spread rebate request forms must be submitted to the Exchange from within 30 days of the transactions to within 3 business days of the transactions. The Exchange believes the reduced submission time period will assist the Exchange in more efficiently processing the rebate requests. The Exchange believes that while the submission timeframe has been reduced, market participants eligible for the program should be able to meet the proposed deadline. The submission of a rebate request form shall also be required for the floor brokerage fee rebate. Such rebate request form must also be submitted to the Exchange within 3 business days of the transactions.

The Exchange intends to implement the proposed changes to the Strategy Fee Cap effective January 3, 2006.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁶ because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2005-117 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-117. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-CBOE-2005-117 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).